

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDDIE GENE EVANS,

Petitioner,

v.

ORDER

13-cv-730-wmc

MICHAEL MEISNER, Warden,
Columbia Correctional Institution,

Respondent.

Petitioner Eddie Gene Evans is presently incarcerated by the Wisconsin Department of Corrections at the Columbia Correctional Institution in Portage. Evans seeks a writ of habeas corpus under 28 U.S.C. § 2254 to challenge the revocation of his release from prison on extended community supervision. After conducting a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the court concludes that an answer is needed from the respondent.

FACTS

On May 27, 2004, Evans was convicted of armed robbery with threat of force in Dane County Case No. 03CF1002. The circuit court sentenced him to serve seven years in prison, followed by a 13-year term of extended supervision.

On January 21, 2010, Evans was released from prison for transfer to a “Transitional Living Placement” residence or TLP. He returned to custody on January 26, 2010, having missed a scheduled visit with his parole officer. While in custody at the Dane County Jail, Evans was captured on surveillance video pulling the cable cord out of a television. According to statements in a conduct report, another inmate had reportedly

blocked Evans's view, causing him to become angry. By damaging the television, Evans violated rule 1 of the rules governing his placement on community supervision.

On March 21, 2010, Evans removed the wringer assembly from a mop bucket and used it to strike another inmate numerous times on his arms, face and head. This behavior violated rules 1 and 27 of the rules governing his placement on community supervision. When a jail liaison agent asked Evans to provide a statement about the incident, Evans refused. This behavior violated rule 15 of the rules governing his placement on community supervision.

On August 10, 2010, an administrative law judge with the State of Wisconsin Division of Hearings and Appeals found that Evans committed at least three violations of the rules governing his supervised release. The ALJ revoked Evans's parole and returned him to prison for a term of four years and six months. After Evans filed an appeal, the administrator for the Division of Hearings and Appeals sustained the ALJ's decision on August 31 2010.

Evans sought judicial review of his parole revocation in Dane County Circuit Court, arguing that the ALJ's decision should be set aside for the following reasons: (1) the evidence was insufficient to support revocation; (2) the ALJ improperly considered hearsay statements in a conduct report; (3) he was denied adequate notice of the alleged violations; (4) his revocation proceeding was unduly delayed; (5) the March 21, 2010 assault could not form the basis for a violation (under a theory of collateral estoppel) because he was subsequently found "not guilty" on charges of battery by a prisoner stemming from that incident in *State v. Evans*, Dane County Case No. 10CF529; and (6)

he was not actually on extended supervision when he committed the violations. The circuit court rejected each argument affirmed the ALJ's decision, *see Evans v. Schwarz*, Case No. 10CV6008 (June 6, 2011), as did the Wisconsin Court of Appeals, *see Evans v. Schwarz*, App. No. 2011AP1386 (Sept. 27, 2012). Thereafter, the Wisconsin Supreme Court denied Evans's petition for review on May 13, 2013.

Evans now seeks a federal writ of habeas corpus pursuant to 28 U.S.C. § 2254 from the revocation of his extended supervision. In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Construed generously, Evans appears to raise the same claims that he presented in state court. It further appears that he has exhausted all available state court remedies and that his petition is timely. Therefore, the court will authorize service of the petition on the respondent.

ORDER

IT IS ORDERED THAT:

1. **Service of petition.** Pursuant to an informal service agreement between the Attorney General and the court, the Attorney General is being notified to seek service on the respondent, Michael Meisner, in his official capacity as warden of the Columbia Correctional Institution.
2. **Answer deadline.** Within 60 days of the date of service of this order, respondent must file an answer to the petition, in compliance with Rule 5 of

the Rules Governing Section 2254 Cases, showing cause, if any, why this writ should not issue.

3. **Motions to dismiss.** If the state contends that the petition is subject to dismissal on its face - - on grounds such as the statute of limitations, an unauthorized successive petition, lack of exhaustion or procedural default - - then it is authorized to file within 30 days of this order, a motion to dismiss, a supporting brief and any documents relevant to the motion. Petitioner shall have 20 days following service of any dismissal motion within which to file and serve his responsive brief and any supporting documents. The state shall have 10 days following service of the response within which to file a reply.
4. **Denial of motion to dismiss.** If the court denies such a motion to dismiss in whole or in part, then it will set deadlines for the state to file its answer and for the parties to brief the merits.
5. **Briefing on the merits.** In the event that the respondent does not file a motion to dismiss as outlined above, the court will proceed to consider the merits. The petition in this case is already in the form of a brief on the merits. (Dkt. # 1). Therefore, the parties shall adhere to the following briefing schedule with respect to the merits of petitioner's claims:
 - a. Petitioner shall file any additional brief in support of his claims or give written notice that he intends to rest

on his initial brief within 30 days after respondent files its answer.

- b. Once petitioner submits additional briefing or gives written notice that he does not intend to file further briefing, respondent shall file a brief in opposition within 30 days.
- c. Once respondent files a brief in opposition, petitioner shall have 20 days to file a reply if he wishes to do so.

Entered this 25th day of February, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge